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ABSTRACT

A brief history of corporal punishment in the public schools, a review of major federal court decisions regarding corporal punishment and due process for students, and an analysis of current trends in disciplinary policy are presented in this report. The conservative trend revealed in school discipline is identified in large part as a response to the misapplication of liberal notions of humane treatment during recent decades. The author urges educators and governmental officials to make every effort to find disciplinary practices that will be constructive and supportive of a student's learning experiences, and argues that investment in research concerning disciplinary alternatives could lead to reduced costs in the long run. (PGD)

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A LEGAL-HISTORICAL EXAMINATION OF STUDENT DISCIPLINE: ALTERNATIVE TRENDS IN EDUCATIONAL POLICY *

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Introduction

As one of the most volatile and perennial problems facing the schools and society, student discipline has so exercised our consciousness, that intervention has occurred by not only school administrators and staff, but also, by the courts and other governmental bodies. Discipline in the public schools has been the instrumentality for modifying errant behavior exhibited by students. This has been illustrated by various works.[1] However, the schools of America have come under increasing pressure to abandon their "outmoded" methods of discipline in favor of more "humane methods" of resolving student problems.[2]

Nationally, attention has been focused on the issue of student discipline through the publicity given several reports issued by civil rights and child advocacy groups. The groups reported findings that disproportionate numbers of male and minority group students were being suspended and expelled from schools in a discriminatory manner. These findings brought into the limelight a series of charges and countercharges as well as a list of unanswered questions.[3]

More recently, attention is being directed towards the inability of students to cope with problems associated with the schools. The notion is implied that school disorders exist primarily because students have developed a dislike for authority and lack of respect for administrators and teachers. A contrasting point of view suggests that students are not totally responsible for the disruption and chaos that is evident in some public schools. The differing perceptions of discipline problems by administrators, teachers and students along with the evidence of disproportionality in suspension and expulsion rates, warrants further inquiry

into factors other than student behavior as contributors to school disruptions and high rates of suspension and expulsion of students.

The suspension, like corporal punishment, in the schools has traditionally been used as a form of chastisement intended to affect behavior modification, while causing only a temporary interruption in the student's overall school experience. Often, however, the arbitrary imposition of a suspension or paddling results in only a "hardening experience" for the child to the extent that the road to expulsion and the ultimate denial of educational opportunity begins to be laid brick by faithful brick.

The history of discipline in the schools has all too often been an attempt by busy administrators to treat a disruptive student as a surface blemish to be removed from the student body. What is worse to realize is the fact that the student body has been conditioned by tradition to accept its imposed paddlings and/or suspensions to the extent that alternatives to the entire wasteful process are only now beginning to be explored. The problem is that certain students tend to be disciplined for offenses that are not of a violent nature, but offenses of a covert nature against the school. In essence, ". . . they have assertedly engaged in institutionally inappropriate behavior, disregarding the "hidden curriculum" or values underlying institutional public schooling . . ."[4] Since this phenomenon is having such a tremendous effect on the entire educational arena, there is a need to critically examine those areas which have the most significance.

The purpose of this paper is to provide the reader with an in-depth analysis of historical and legal trends of student discipline, within

the context of public education in these United States. Additionally, the discipline system as it now exists, will be examined and inferences drawn, with respect to alternative trends in educational policy.

From Hickory Stick to Dewey

Historically, the chosen method of discipline in the United States has been corporal punishment. The practice traces its roots back to the days of the ancient Hebrews and Egyptians who both promoted and condoned its use. The religious nature of colonial education lent itself well to this practice of the disciplining of the flesh due to the prevailing assumption that people were, by nature, corruptable and in need of being reformed. Children of the day were not allowed their days of innocence, but were expected from early age to reason and perform as little adults. As "adults" they were also responsible for their own learning. Teachers of the period were essentially facilitators: their duties were confined to the hearing and assignment of lessons, the manufacture of pens, the setting of copies, and the maintenance of order.[5] Indeed, the School Rules of 1645 of Dorchester, Massachusetts, stated that the schoolmaster was not to be hindered in the exercise of his authority as his "rod of correction" was an "ordinance of God."[6]

The early nineteenth century continued the practices of colonial America. Humiliation and harshness in the forms of fines and verbal corrections began to gradually replace the whipping posts of colonial times. However, certain archaic forms still survived in the use of sewing thimbles to rap children on the head, wooden bits to insert into the child's mouth and affixed to his/her head, the split ends of branches fastened to the nose, baskets suspended from ceilings in which to leave

children overnight, and the old reliable dunce cap.[7] Underlying the entire process was the belief that corporal punishment would develop in students the qualities of good moral character and academic excellence through the disciplining of the mind. This philosophy would prevail until the emergence of a more enlightened viewpoint from Europe at mid-century.

The theorists Johann Pestalozzi and Friedrich Froebel did much to destroy the old concept of the corruptability of children by forcing educators to look upon the child as a good child, given the fact that the learning environment needed to be secure and that children needed to be active in the learning process. John Dewey continued to expand upon this concept by advancing the theory that a child learns to choose his actions through practice. In other words, discipline is developmental. It is unfortunate that the followers of Dewey, like Kilpatrick, believed that this meant that children were ready for self-discipline if only left to themselves to follow their own interests.[8] Denied a framework upon which children may build their experiences, they are doomed to act at random; and the entire progressive movement has suffered due to this misunderstanding of Dewey's theory ever since. Dewey had intended all along that discipline be viewed as an educational problem, not an administrative problem.[9] The schools have never fully understood that the aim of discipline is to make people self-controlling and self-responsible: not to impose its will from without, but within.

Today's educators face a continuing struggle between the coercive structures which have been traditional in American life and which emphasize an external locus of control and self-disciplining structures which

emphasize an internal locus of control.[10] The main question here is power. Students who have no power to affect their own decisions can never experience self-discipline. Yet, to surrender power completely, without leaving a structure upon which to build, is only inviting chaos. What is needed are new structures for schools that encourage student self-discipline through cooperation.[11]

Traditionally, schools have been unwilling to surrender their coercive structures and have turned to one of the following five methods or options to handle school discipline problems: (1) more rules and harsher punishments, (2) more teacher training, (3) easier suspension, (4) increased campus security, and (5) juvenile justice revisions.[12] Options four and five assume that outside controls and help may assist the school in solving its problems. This may not work as well as it first appears as doubts exist as to whether the courts will have any more luck than the schools in either rehabilitating children by sending them to trial as adults or by making their parents legally accountable for their children's conduct. Option two also assumes that teachers can be made responsible for students' conduct and problems and that teachers agree on how to handle discipline problems.[13] This leaves only options one and three in the coercive power structure as viable options which the school can affect. Each presents its own special problems in that the desired end-result often contradicts the intended purpose of education itself.

The Paddle and the Courts

Despite arguments to the contrary, corporal punishment is returning to the classroom due to the almost universal breakdown of discipline in the schools. On a national basis, 60,000 teachers and three million

students are assaulted during a normal school year (and this is only at the secondary level).[14] One survey reports that over half of the teachers reporting stated that they had been verbally insulted or insulted by obscene gestures, and one out of eight reported being afraid to confront students.[15] So bad had the situation gotten in Los Angeles that corporal punishment was reinstated in March, 1980, after an absence of four years. Los Angeles school board member Richard Ferraro commented that the return of corporal punishment would be "a powerful deterrent to antisocial behavior."[16] Another member, Bobbi Fiedler, stated that a statewide survey of 800 parent-teacher associations had been held, and that 85 percent of the respondents, both parents and teachers, stated that they favored corporal punishment.[17]

Detractors of the practice are just as vocal. Most of the anti-paddling argument centers on its ineffectiveness at achieving its intended outcome, behavior modification. School psychologist Wayne Foley and counselor John Wilson of Seattle, Washington, found in their studies that the deviant behavior in children is only supressed temporarily. Unfortunately, the punishment neither anticipates nor prevents future outbursts.[18] The National Education Association, after its studies in 1972 and 1973, came out in favor of abolishing corporal punishment in the schools. The NEA stated 17 reasons why it thinks that the hickory stick should be abandoned. Among these were: (1) physical punishment is ineffective; (2) the physical punishment increases disruptive behavior; (3) it hinders learning; (4) it teaches only that "might makes right"; (5) it develops aggressive hostility in students and teachers (6) it is often used on students weaker and smaller than the teacher; (7) its

availability discourages teachers from seeking more effective means of discipline; (8) its use makes students appear less than human; and (9) the schools tend to be regarded as dehumanizing.[19] The 1972 NEA study found physical punishment so ineffective that it usually had to be administered repeatedly.[20]

The divergent opinions have led to almost 100 years of conflicting state laws and lower court decisions which finally culminated in the historic U.S. Supreme Court decision in Baker v. Owen.[21] Baker originally came into existence as a lawsuit brought by the mother of one Russell Carl Baker against the school system in protest over the administration of corporal punishment against her wishes. Mrs. Baker contended that the use of corporal punishment was cruel and unusual punishment and forbidden under the Eighth Amendment guarantees. A question of whether substantive due process was followed prior to the administration of punishment was made and the actual constitutionality of the state statute authorizing the use of reasonable force by teachers in disciplining students was questioned.[22] The case was heard on January 13, 1975. On April 23, 1975, a decision was reached in the United States District Court M. D. North Carolina, Greensboro Division.

The court determined that even though the 14th Amendment generally leaves control of discipline over children to the parents, the right is not fundamental and the state has a legitimate interest in maintaining discipline in the public schools.[23] The court said that teachers and school administrators do have the right to administer corporal punishment, but only after according minimal due process in the course of such punishment. It was felt that the child has a liberty or property interest in freedom from the arbitrary imposition of corporal punishment and that

some procedural safeguards must be present.[24] Such safeguards should be attempts to: (1) inform the student that his misbehavior could occasion the use of corporal punishment; (2) first modify behavior by means other than corporal punishment; (3) punish corporally in the presence of another school official informed of the reasons for the punishment; and (4) provide in writing, upon request, the reasons for punishment to the parents, along with the name of the second school official who witnessed the punishment.[25] Finally, the use of corporal punishment in this case was held not to be cruel and unusual; although it was realized that the issue was still unsettled as far as the Eighth Amendment was concerned.[26] The decision of the three-judge court was appealed directly to the United States Supreme Court. On October 20, 1975, the judgment of the lower court was affirmed without comment.[27]

An interesting commentary involving parental permission occurred recently in San Diego where a court has approved a $20,000 out-of-court settlement in a case involving the paddling of a retarded female student by a principal.[28] The principal had gone through the process of calling the mother and receiving permission to paddle the child, thinking that he was safe in administering the punishment using a fraternity paddle. Apparently, the permission had "expired" and the mother claimed that she thought that the corporal punishment would be a "token swat" with a ruler. The so-called "theory of informed consent" had failed to prevent a charge of assault and battery from being levied at the principal.

The fact that the U.S. Supreme Court had affirmed Baker without comment caused much division in the United States Court of Appeals for the Fifth Circuit as it attempted to rule in the case of Ingraham v. Wright.[29] In this case a group of students from the Dade County school system,

among them Ingraham and Andrews, brought suit against principal Wright, his assistant principals, the school board, superintendent, etc. The suit claimed that the use of corporal punishment deprived the students of substantive due process, was in violation of the Eighth Amendment guarantees, and involved the students in a grievous loss under which the due process standard of the 14th Amendment should be applied. Compensatory and punitive damages and declaratory and injunctive relief against the school system were sought in the action.

When the U.S. District Court dismissed the action, the parents appealed. The Court of Appeals reversed the District Court's decision and remanded the case. In its holding, the Court of Appeals expanded the Baker decision that corporal punishment in the schools was not cruel and unusual punishment by stating that the Eighth Amendment proscriptions are only intended to be invoked in matters involving criminal conduct.[30] The court further held that the plaintiff's claim of being deprived of substantive due process as a protection against arbitrary government action was without merit. The court felt that guidelines had been published by the school system and that the court would not make decisions as to the reasoning of the teacher or administrator which led to the degree of punishment inflicted. The majority of the court felt that the Supreme Court's decision in Baker to affirm without comment addressed itself only to the question of parental objection to corporal punishment. As the procedural safeguards part of the decision was not involved in the appeal, it was, therefore, not decided upon and not considered as "law of the land" and binding.[31]

The Court of Appeals in Ingraham was well aware that the procedural safeguards issue had arisen before in Goss v. Lopez,[32] but felt that the

Ingraham case involved no grievous loss of educational benefits or property interests--only a routine disciplinary measure which did not affect the student's liberty interests in maintaining their good names and reputations.[33] Indeed, the court felt that the value of corporal punishment would be diluted if elaborate procedural processes had to be followed in every case.[34]

Ingraham was appealed directly to the U.S. Supreme Court.[35] The case was argued on November 2-3, 1976, and decided on April 19, 1977. The five-four decision of the Court was to affirm the holding of the Fifth Circuit Court of Appeals. The Supreme Court further elaborated upon the applicability of the Eighth Amendment to only criminal proceedings. In tracing the history of the Amendment, the majority felt that its derivation from the English Bill of Rights of 1689 was evidence enough that the original framers of the U.S. Constitution had intended all along that the Amendment apply only to injustices committed against those already convicted of a crime. Since before the American Revolution, it had been the accepted practice at common law that a teacher had the right to inflict "moderate correction" on a child in his care, but only to the extent that it is "necessary to answer the purposes for which (the teacher) is employed."[36] The very openness of the public schools and their supervision by the community was seen to afford students ample protection from abuse by school officials. If the parents believe that the punishment was unjustified or was inflicted with malice, they still have legal redress through the courts by suing the teacher for recovery of damages and/or for assault and battery.

Most interestingly, the Court held that as long as a state has acted to preserve what "has always been the law of the land,"[37] the Due Process

Clause of the 14th Amendment does not require notice and a hearing prior to the imposition of corporal punishment. Principals and teachers are admonished, however, that they must exercise prudence and restraint when deciding the necessity of corporal punishment. The imposition of additional administrative safeguards would be an unnecessary intrusion upon the arena of school responsibility. In fact, it was recognized by the Court that some school officials might be forced to abandon corporal punishment as a disciplinary measure rather than be forced to comply with costly procedural requirements which necessitate a diversion of attention from normal school pursuits. The Justices concluded that the benefits realized by imposing a constitutional requirement to impose prior notice and hearing would not justify the cost of that imposition.

Ingraham has been regarded for some time now as the final word on corporal punishment. However, like many last words, it did not prove to be the last after all. Recently, in a Fourth Circuit Court decision in the case of Hall v. Tawney[38] the issue of granting substantive due process in cases of corporal punishment arose (an issue which Ingraham had not settled).

On December 6, 1974, Naomi Hall alledged that she was struck repeatedly on the hip and thigh by a teacher using a five-inch-wide rubber paddle. The paddling supposedly resulted in the girl's confinement to a hospital for a period of ten days and her subsequent treatment by specialists for possible permanent injuries to her lower back. As in Ingraham, with which it shares many similarities, the principal, teacher, and school board were all named as defendents.

Hall's attorneys argued that as the parents had instructed the school that they did not want their daughter paddled, the school had violated the parents' right to decide upon the means of discipline to be used in punishing their child. Secondly, the attorneys stated that the paddling violated Hall's substantive due process rights. The U.S. District Judge for the Southern District of West Virginia dismissed the suit before it came to trial on the basis of the Ingraham decision. The case went on appeal to the Fourth Circuit Court of Appeals which reversed the lower court's ruling on May 9, 1980. While the Fourth Circuit agreed that the parents have no constitutional right to forbid corporal punishment, the court based its reversal of the lower court's decision on the substantive due process issue by stating that Ingraham did not expressly forbid the courts from examining whether school officials might have violated a student's substantive due process rights through the administering of corporal punishment. The court then proceeded to define substantive due process as "the right to be free of state intrusion into realms of personal privacy and bodily security through means so brutal, demeaning, and harmful as to shock the conscience of the court."

The impact of the ruling is crucial. School board members, teachers, and administrators alike are hearby put on notice that even though they cannot be sued for violation of a student's procedural due process rights, or for violation of the Eighth Amendment provisions, they are still liable for attorney's fees and monetary damages if the court can be convinced that the corporal punishment employed would "shock the conscience of the court."[39]

The Suspension Alternative to Paddling?

With the brutality involved in both the Hall and Ingraham cases, the suspension of a student from school might appear on the surface to be the more viable alternative to maintaining discipline in the schools. But is it accomplishing its end? Certainly in terms of usage, it is a success. The Children's Defense Fund reports that, using the data available from the Office for Civil Rights' 1972-73 survey of 2,862 schools with a combined population of 24 million students, over one million students were suspended in the course of the year.[40] This means that overall one out of 24 students faced suspension at least once; and at the secondary level, the figure increased to one out of 13.[41] However, due to reporting differences, non-reporting, etc., the figures may not be inflated to their proper levels.

Suspension from school serves several apparent purposes, according to its advocates:[42] (1) it forces students to comply with those established behavioral rules which are necessary to "maintain an atmosphere conducive to learning and teaching"; (2) it helps students to learn acceptable modes of conduct in a free society; (3) it provides a "cooling off" period for both student and school staff who have been unable to deal with the behavior problem through other means; and (4) it serves to "provoke a crisis" which forces parents to get in contact with the school. The suspension is popular as a tool of administrators due to the fact that it takes less time than other alternatives, and the fact that school officials feel that it is effective.

Is the use of the suspension justified in light of recent increases in violence and vandalism in the schools? Are suspensions being used to stem this tide? The evidence compiled by the Children's Defense Fund

says no. The survey was conducted by questioning both parents and students as to the reasons given for the imposition of suspensions. The survey revealed that 63.4 percent of the suspensions were for school rules violations and not for violence in the schools.[43]

Suspensions have also been found to have a disproportionate impact upon students with certain characteristics of race, sex, and income. Blacks were found to be suspended more often for discretionary minor offenses and fights, whereas white students were placed under suspension more often for attendance problems and violations of the law.[44] Males are twice as likely to be suspended as females; and students who are poor enough to receive free or reduced price lunches are more likely to be suspended.[45]

The long-range impact of suspensions upon students can be one of rejection in its message.[46] Certain students simply resolve to quit school early to avoid the hassle. The arbitrary imposition of suspensions sometimes makes students question how fair school justice really is. Indeed, the student is labeled as a troublemaker and is not only denied the social structure in his life, but also his chance for academic success during the year. Such impacting upon the career of a student has provided a wealth of litigation over the years which culminated in the celebrated case of Goss v. Lopez.[47]

Although case law is unclear as to whether a pupil may be suspended or expelled permanently from school, one Illinois court has ruled that an expulsion cannot extend beyond the end of the current school year,[48] and a South Carolina court has held that a principal has the authority to suspend pupils unless denied that authority by the school board.[49]

School law was confusing in its application of due process before Goss in that the Due Process Clause might be applicable to short term suspensions in one court and inapplicable in another for suspensions of the same length within the same Circuit. For example, a suspension of three days was subject to the provisions of the Due Process Clause in the case of Shanley v. Northeast Independent School District, Bexar County, Texas,[50] but not applicable to a suspension of three days in the case of Dunn v. Tyler.[51] The federal courts have demonstrated the same variation in their decisions.

In 1971, existing Ohio law allowed a principal to suspend students for up to ten days for misconduct or to expel the students from school. Notification had to be made to the parents within 24 hours of the suspension stating the reason for the action. The law allowed an expelled pupil the right to a hearing before the board of education, but no such provision existed for pupils under suspension. Nine pupils who were suspended from school during a period of unrest in the Columbus, Ohio, schools during the months of February and March, 1971, sued in federal court charging that they had been denied due process of the law contrary to the 14th Amendment in that they were suspended from school without a hearing prior to suspension or within a reasonable time thereafter. They also sought to have the administrators remove all traces of their suspensions from their official school records.

The preponderance of evidence was that no such hearings had been held, and pursuant to the plaintiffs charges, the Ohio statute which permitted the suspensions was declared unconstitutional. The defendants appealed on the basis that the right to an education does not exist under the Constitution, and the Due Process Clause does not apply to sus-

pensions as they do not represent a "severe detriment or grievous loss" to the students. The U.S. Supreme Court, in upholding the decision of the District Court, stopped short of requiring hearings which would involve counsel, cross-examining witnesses, etc.; but felt rather that an informal hearing would act as a measure of safety against an erroneous action by an administrator. Also, the matter only applied to suspensions shorter than ten days. Other length suspensions might require more formal procedures.

Reaction to Goss was to be expected in light of the resulting confusion as to what the Court intended as a due process hearing. However, the process has proven to be neither elaborate nor time consuming, and is in line with most existing school practices.[52] Many lower courts and local and state boards of education have adapted their laws and procedures to include those situations involving longer suspensions so as to be in line with Goss.[53]

One area of litigation which has arisen concerning Goss has been the question of suspension or expulsion of special education students. The argument has been that any action of this kind changes a student's special education placement which cannot be done without amending the student's individualized educational plan. The main problem arose in this area in the case of Stuart v. Nappi[54] where a Connecticut special education pupil was prevented from being expelled because of this placement. The court held that certain rights established under P.L. 94-142 would be violated if the student were expelled from school. Among these were: (1) the right to an "appropriate public education"; (2) the right to remain in her present placement until the resolution of her special education com-

plaint; (3) the right to an education in the "least restrictive environment," and (4) the right to have all changes of placement effectuated in accordance with prescribed procedures.[55] The courts have, however, proven lenient so far in their treatment of short-term or emergency suspensions involving special education students as long as the minimal procedures set forth in Goss are observed.[56]

A comparison of the rulings in Goss and Ingraham would lead administrators to view the rulings as basically in conflict. Consider that Goss imposes a minimal due process hearing so that an erroneous action might not be taken; whereas Ingraham states that such an action or hearing would decrease the value of the corporal punishment by virtue of the delay. One must consider the Ingraham ruling in light of the earlier Baker case and, as such, follow the Baker guidelines to eliminate any potential conflicts which might arise in future litigation. The due process issue is far from settled in these areas.

A Movement Toward Alternatives

Dissatisfaction with current methods of discipline and the restraints being placed upon school systems in maintaining discipline have forced educators to seek alternative methods of dealing with the disruptive student. Francis Ianni, Director of the Horace Mann-Lincoln Institute at Teachers College, Columbia University, feels that what is needed in the schools are rules which allow a "firm, fair, and consistent structure of social control."[57] Ianni states that the key is a consistent, even-handed application of these rules without exception, and that the rules serve educational, rather than disciplinary, ends.

Roland Barth, Harvard Graduate School of Education, echoes this concern for consistency in stating that schools often "do not have enough effective ways to say to a child, 'If you do that again, _____ will happen.'"[58] Barth recommends setting up a process within the school modeled upon the adult legal system. Three levels of rules are formulated: at the classroom level (where diversity is permitted), in common areas (where no diversity is allowed, or desired), and at the office level for true disciplinary problems. Barth recommends the use of letters and conferences with parents at which one or two of the child's behavior problems become the focus and rules are spelled out to the child. The conference is followed by sending a letter home from the principal summarizing what was discussed and the manner in which the child is expected to behave upon his/her return to school. If the child again fails to live up to the agreement, (s)he is sent home for a day. Barth has found the system effective in that it backs up the promise of the school with force as well as concern. Here the key is "clear expectations and carefully laid out consequences."[59]

Thomas McDaniel, Director of the Master's Education Program at Converse College, feels that teachers may effectively incorporate elements of three models (behavioral, human relations, and pedagogical) into their teaching styles to prevent disciplinary problems from arising in the first place.[60] The main elements of the behavioral model involve modeling and establishing rewards for desirable behavior and using positive verbal and non-verbal responses to praise that behavior in the classroom. In the human relations model the teacher treats the students with respect and politeness, negotiates with students to establish rules of behavior, and

communicates effectively with students by using various techniques. The pedagogical model is designed to prevent problems in the classroom through motivational and assertiveness techniques, and providing varied lessons and a series of natural consequences of student misbehavior. Through these models effective discipline, it is felt, may be maintained at the classroom level.

Edward Lichtenstein, Coordinator of Alternative Education Programs in the Wallingford-Swarthmore School District in Pennsylvania, suggests several alternatives to suspension of students from the school itself.[61] Among these are the development of (1) a "time-out program" to allow the schools time to develop a program to put a student back into the regular classroom environment; (2) a "halfway program" for students moving from special education classes to mainstreaming; (3) special work-study programs; and (4) special self-contained classrooms for disruptive students. Although these measures are intended to aid in avoiding suspension and expulsion of special education students, there is no reason that they could not also be applied to the problem of suspensions and expulsions at large.

Barbara Martin, a teacher at Lynnfield High School in Massachusetts, describes a special in-school suspension room within her school, known as "The Slammer," which has proven very successful in dealing with disruptive students.[62] Students are assigned to a special classroom by referral and are allowed a "cooling-off time" to vent their frustrations and tell their side of "what really happened." Records are kept by the two part-time teachers in charge, and a contract is drawn up between student and teacher as to expectations and responsibilities. Lessons

are sent to the room by the teachers of the students so that they may keep up with their classwork during the day-long confinement. The number of students assigned is limited to five. The room provides an "oasis" with a sympathetic ear within the student's troubles at school; and it provides a positive structured alternative to those irresponsible students with whom traditional methods have previously failed.

Daniel Duke, Professor of Education at Stanford University, feels that the only solution to school disciplinary problems is to break up the large urban schools into smaller, more manageable units with self-contained or speciality programs.[63] Duke states that certain students are not ready to make the transition from self-contained classroom to a large secondary school with multiple teachers and expectations.

Duke also finds fault with the way in which educational research has tended to shift the blame for disciplinary problems from the student to other environmental and personal factors.[64] In effect, this "depersonalization of blame" has only served to mask the issue, rather than focusing upon it. Duke feels that school discipline may not be linked to harsher rules and punishments, but rather to whether students are willing to accept responsibility for their own behavior.

Implications for Educational Policy

Education as with other fields of social policy, has had a relationship with law for hundreds of years. During the 1960's, we saw the evolvement of significant changes in social policy and an emerging new relationship between the two, mainly due to the expansion of law into education, in the Brown decision. Our prime concern here is on the nexus between student discipline and its implications for educational

policy. Even today, many view legal intervention into the educational arena as deus ex machina, that only causes havoc in the school's operation. This notwithstanding, there is a need to study the issue of student discipline and draw some implications for educational policy.

The basic implications of historical and legal teends of discipline is that through disciplinary practices, we are affirming a social policy in America. Riggan[65] asserts that American education has lived with at least two essential but contradicting social policies. First, universal education of the citizenry for participation in a democratic society; and second, the identification of elites and non-elites for capitalistic production processes through mechanisms such as class, race and sex. Carnoy states that "the discipline of workers is maintained through the promise of good pay, steady work and possible promotion for those who conform."[66] The work alone is without value to the worker, incentives must be utilized to insure appropriate working behavior. Traditionally in schools, the attraction of promotion and high grades has helped to maintain discipline. However, with the present economy and the job situation, the probability of social success from education has deteriorated. Likewise, the grading system is no longer adequate to maintain student discipline. These are not the point of discussion here. We merely wish to illustrate that in discussing the implications of the historical and legal trends of school discipline, i.e., extra homework, detention, suspension or corporal punishment, we need to keep clearly in mind the fundamental social policy used to legitimize disciplinary practices as part of the educational process.

The issue is, which social policy is being affirmed in the kinds of disciplinary practices used? Conformity to socially prescribed norms

and expectations for participation in production processes appears to be the affirmed policy. History documents this fact quite clearly. The American public because of religious roots has consistently believed in the use of corporal punishment in schools as acceptable disciplinary practice to modify unacceptable behavior and to use fear as a means of motivating students to subscribe to the regulated ways of society.[67] This belief in physical punishment is associated with the public's continued concern with those unacceptable behaviors in the schools and therefore "lack of discipline."[68]

Parents, teachers and administrators continue to see child-rearing through historical lens. Therefore, they give credence to the use of external sanctioning systems such as physical punishment that advocates social conformity. The social conformity promoted is one that makes an individual fit for their prescribed place in society.[69] With the use of western democratic philosophy, came a belief in freedom, due process and individual rights.

This new set of beliefs became the foundation for the development of an alternative approach to discipline. The new approach to discipline was characterized by acceptance of less restrictive behaviors of the young and the rewarding of acceptable behavior. The aim of discipline did not change, but the approach did. Control and training is still the objective but discipline is now defined as self-control developed with the support of a reward system. The alternative approach to discipline has become the opposing legacy of the progressive educator.[70] This legacy sheds light on the conflicts as to the definition of school discipline. On the one hand discipline is viewed as a set of sanctioning practices characterized by pain, fear and/or deprivation, that promote

external-control and social irresponsibility. On the other hand, discipline is viewed as a set of rewarding practices characterized by pleasure, confidence and self-affirmation that promote self-control and social responsibility. The conflict is often reflected in schools in debates over whether discipline is a curricular matter, inseperable from pedogogical aims and methods, or whether discipline is a managerial responsibility of teachers and administrators.[71]

Today, the progressive definition of discipline is less acceptable. This follows from the fact that American educational goals of self-direction and social responsibility continue to have less value, than those of social conformity.[72] Instead, discipline is expressed in schools as a matter of traditional practice of chastisement expressed in terms of managerial responsibility. As a managerial function, discipline involves both the matter of in loco parentis role of school personnel and the matter of the rights of students and parents. The implications are quite clear in regards to these matters.

Litigation trends suggest clearly that social control for production processes is the real meaning of the heavy involvement of the judiciary system in education. The turning to the liberal courts by ethnic/racial, language or gender minorities; by student rights advocates and by the handicapped during the '60's and '70's, was the result of the failure of other forces within our political system to provide the expected social justice. Now, right wing conservatives have successfully come to the bench. Traditional disciplinary practices are regaining social legitimacy through legal decisions. Still in public schools, every administrative act must be tested against constitutional restrictions.

> ". . . where an attempt is made to enforce an unreasonable or ultra vires rule, aggrieved parties may have recourse to the court . . ."[73]

In effect,

> . . . where the state punishes students for disobeying school rules, the state has engaged in "state action," which is subject to the prohibitions contained in the First and Fourteenth Amendments. The nub of this legal doctrine is that constitutional guarantees such as freedom of speech and religion, equal protection of the laws, and due process of law apply only to acts of the state . . .[74]

The role of the administrator and teacher has been strengthened in some cases, to achieve "more effective" discipline in the school. Much of this has been achieved through educational policies and court decisions, in spite of student and parent opposition. They are exercising their rights as citizens to employ legal remedies against school disciplinary practices, which were perceived not to be judicious. School personnel and school boards have successfully withstood these efforts to remedy dubious disciplinary practices, under several guises. First, the maintaining of discipline in schools; second, the ambiguity of student due process; and third, the supposed protection of themselves and school staff from civil or criminal liability.

This struggle over school discipline has resulted in an adversary school-community relationship that often does not help neither the teacher, nor the student in the classroom. This adversarial relationship is one where teachers and administrators blame parents for "lack of discipline" or "lack of adequate social and emotional support" at home, while parents blame teachers and administrators either for "insufficient discipline" or "misuse" of discipline.[75]

In short, the role of discipline is merely one of maintaining the state's end; namely, an educated and enlightened citizenry. Schools, in

order to survive, are committed to this purpose through enforcement of rules, regulations, and procedures for carrying them out. Rules, regulations and procedures that are not judiciously applied, are contradictory to the purpose of schooling. The consequences of this enforcement, continues to be inappropriate to the needs of students.

Recommendations

Educators must make every effort to address school discipline in ways that will be constructive and supportive of a student's learning experiences. They must do this in spite of the historical and legal trends towards conservative school discipline.

The promise of the aforementioned, appears to hold the key to effective school discipline in the decade, which is upon us. It is therefore recommended that school systems use a multiple-alternative-methods approach toward solving student disciplinary problems. In addition, it must also be realized by administrators that specialists, i.e., counselors, social workers, psychologists, must be employed as part of an overall approach to student discipline. Well-meaning approaches cannot hope to succeed without them.

Government officials will also have to realize that novel approaches such as in-school suspension programs, will need to be funded, monitored and evaluated, in order to show their effectiveness. School officials and their representatives in the state legislatures and at the Congressional level, will have to carefully prepare their cases in requesting these funds. Due to financial exigency in education, the trend has been to reduce spending in light of tax reformers and the public demand for economy and efficiency in government. One can only speculate at the

economy of not funding such alternatives, when the price of losses incurred by maintaining the status quo through its future impact is astronomical.

Finally, further study is imperative. Studies which report on various aspects of student discipline have been conducted. Solutions have been developed, but inadequately operationalized. Clearly, educators are cognizant of the problem. Our goal is meaningful and effective change, in terms of the state and the student. Why have educational organizations failed to alleviate the problem? "The more things change, the more they remain the same" philosophy,[76] is perpetuated in the structure of education. This most rudimentary principle, must be reanalyzed, and placed in meaningful perspective.

END NOTES

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[2]Harris and Fields, supra note 1, at 88.

[3]Neill, Suspensions and Expulsions: Current Trends in Schools Policies and Programs, (Arlington: National School Public Relations Association, ERIC Document Reproduction Service No. ED 127720, 1976).

[4]Yudof, "Suspension and Expulsion of Black Students from the Public Schools: Academic Capital Punishment and the Constitution," Law and Contemporary Problems, Vol. 39, No. 2, (Spring, 1975), at 374-411.

[5]Travers, "An Historic View of School Discipline," Educational Horizons, Vol. 58, No. 4 (Summer, 1980), at 184.

[6]Id. at 184-5.

[7]Id. at 185.

[8]Jones and Tanner, "Classroom Discipline: The Unclaimed Legacy," Phi Delta Kappan, Vol. 62, No. 7 (March, 1981), at 495.

[9]Id. at 497.

[10]Stensrud and Stensrud, "Discipline: An Attitude, Not An Outcome," The Educational Forum, Vol. XLV, No. 2 (January, 1981), at 163.

[11]Id. at 166.

[12]Duke, "School Discipline Policy in the 1980's," The Education Digest, (February, 1981), at 6-7.

[13]Id.

[14]"Allow Spanking in Schools?," U.S. News and World Report, (June 2, 1980), at 65.

[15]Id.

[16]"The Unsparing Rod Returns To School," Newsweek, (March 3, 1980), at 50.

[17]"Allow Spanking in Schools?," op. cit.

[18]Ramella, "Anatomy of Discipline: Should Punishment Be Corporal?," PTA Magazine, Vol. 67 (June, 1973), at 25.

[19]"It's Time To Hang Up The Hickory Stick," Education Digest, Vol. 38 (June, 1973), at 34.

[20]Ramella, at 25.

[21]395 F.Supp. 294, 96 S.Ct. 210 (1975).

[22]Id. at 294.

[23]Id. at 299.

[24]Id. at 295.

[25]Id. at 302.

[26]Id. at 303.

[27]Baker v. Owen, 423 U.S. 907 (1975).

[28]Splitt, "School Law: A $20,000 Spanking," The Executive Educator, Vol. 3, No. 1 (January, 1981), at 16.

[29]Ingraham v. Wright, 525 F.2d. 909 (1976), 425 U.S. 990 (1977).

[30]Id. at 914.

[31]Id. at 918.

[32]Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, L.Ed.2d. 725 (1975).

[33]525 F.2d. at 919.

[34]Id. at 919.

[35]425 U.S. 990.

[36]III Blackstone Commentaries 120.

[37]United States v. Barnett, 376 U.S. 681, 692.

[38]No. 78-1553 (4th Circuit, May 9, 1980).

[39]Flygare, "Corporal Punishment Is Not Yet Dead As A Constitutional Issue," Phi Delta Kappan, Vol. 62, No. 1 (September, 1980), at 53.

[40]Children's Defense Fund, "School Suspensions: Are They Helping Children?," (Washington, D.C., Children's Defense Fund, 1975) at 10.

[41]Id.

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[43]Children's Defense Fund, "School Suspensions," at 37.

[44]Williams, at 7.

[45]Id. at 8.

[46]Id. at 8-9.

[47]419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d. 725.

[48]Board of Education v. Helston, 32 Ill. App. 300 (1889).

[49]Stanley v. Gary, 237 S.C. 237, 116 S.E.2d. 843 (1960).

[50]462 F.2d. 960, 967 n.4 (C.A.5, 1972).

[51]460 F.2d. 137 (C.A.5, 1972).

[52]Kolodny, "Student's Rights: Where Do We Draw The Line?," American Educator, Vol. 2, No. 4 (Winter, 1978), at 64.

[53]Flygare, "Some Jubilee Year Observations," Phi Delta Kappan, Vol. 62, No. 5 (January, 1981), at 390.

[54]443 F.Supp. 1235 (1978).

[55]Id. at 1240.

[56]Flygare, "Some Jubilee Year Observations," supra.

[57]Ianni, "A Posttive Note On Schools And Discipline," Educational Leadership, Vol. 37, No. 6 (March, 1980), at 458.

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[60]McDaniel, "Exploring Alternatives to Punishment: The Keys to Effective Discipline," Phi Delta Kappan, Vol. 61, No. 7 (March, 1980), at 455.

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[63]Duke, "School Disciplinary Policy in the 1980's," at 8-9.

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[66]Carnoy, Marxian Approaches To Education (Stanford University: Institute for Research on Educational Finance and Governance, July, 1980), at 69.

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